

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

John D. West, on Behalf Of Himself and All)	
Other Persons Similarly Situated,)	
214 Woodlawn Road)	
Butler, Pennsylvania 16001)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No.: C-1-02-0001
AK Steel Corporation (Formerly ARMCO Inc.))	
Retirement Accumulation Pension Plan, a part)	
of the AK Steel Corporation (Formerly)	
ARMCO Inc.) Noncontributory Pension Plan,)	
703 Curtis Street)	Judge: Hon. Sandra S. Beckwith
Middletown, Ohio 45043)	
)	
And)	
)	
AK Steel Corporation Benefit Plans)	Magistrate Judge: Jack Sherman, Jr.
Administrative Committee,)	
703 Curtis Street)	
Middletown, Ohio 45043)	
)	
Defendants.)	
)	

**DEFENDANTS' MOTION FOR RECONSIDERATION OF
RECUSAL ORDER AND SUBSTITUTION OF COUNSEL**

Defendants hereby move the court to reconsider its Order of October 20, 2004 in which Chief Judge Beckwith recused herself in this action. Defendants infer from a pattern of recusals in other cases that the Recusal Order is based on the fact that the firm of Graydon Head & Ritchey LLP serves as local counsel for Defendants in this action. On the unique facts of this case, Defendants submit that the Court should allow Defendants to substitute new local counsel

for the Graydon Head & Ritchey firm and reconsider the Recusal Order. The motion should be granted for the following reasons:

1. First, this is a complex ERISA class action that was filed almost three years ago. The Court has devoted considerable time and effort to learning the background law and facts of the case. In order to decide plaintiffs' pending motion for summary judgment on the proper calculation of damages and the cross-motion that will be timely filed by Defendants, a new judge would have to spend a great deal of time reviewing the docket and familiarizing himself or herself with the governing law and this Court's prior decisions.¹ For example, this Court's liability decision is the essential starting point for analyzing the complex damages issues that will be presented by the parties' cross-motions on damages. Substitution of counsel and reconsideration of the Recusal Order would better serve the interests of justice than the delays and the loss of judicial economy that may occur if the case is reassigned.

2. Second, substitution of another firm as local counsel in this action will impose no hardship on the Court, the parties, or the Graydon Head & Ritchey firm because the principal legal work for Defendants in this case has been done by the firm of Covington & Burling. The Graydon Head & Ritchey firm has served exclusively in the role of local counsel and has performed only those tasks that it is required to perform in order to assure compliance with the rules of this Court.

3. Third, Defendants have identified substitute local counsel for this action. Defendants hereby seek leave to substitute Mr. George Yund of Frost Brown Todd LLC for Michael Roberts of Graydon, Head & Ritchey as local counsel from this point forward.

¹ Defendants also submit that the court need not consider any questions relating to the calculation of damages because ERISA does not permit an award of damages in this case. *See Defendants' Motion to Dismiss Plaintiffs' Claims Under Crosby v. Bowater, Inc. Retirement Plan*, –F.3d–, 2004 WL 2002267 (6th Cir. Sept. 9, 2004).

4. Were it not for the facts that (i) this case has been pending for almost three years, (ii) this Court has invested a substantial amount of time and accumulated a substantial amount of expertise in the action, and (iii) the role of the Graydon Head & Ritchey firm has been limited to those tasks that it is required to perform by local rules, Defendants would not seek reconsideration of the Recusal Order. Under the current circumstances, however, Defendants submit that reconsideration is warranted.

Respectfully submitted,

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*Proposed Substitute Trial Attorney
 for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Allen C. Engerman, Law Offices of Allen C. Engerman. P.C., 666 Dundee Road, No. 1200, Northbrook, IL 60062, and Thomas R. Theado, Gary, Naegele, & Theado, 446 Broadway Avenue, Lorain, OH 44052-1797.

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[PROPOSED] ORDER

This matter is before the Court on Defendants' Motion for Reconsideration of Recusal Order and Substitution of Counsel. It is hereby **ORDERED** that the Motion is **GRANTED**. The Clerk is directed not to proceed with the reassignment of this case.

Date: _____

United States District Judge